UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

BELINDA J. PERKINS,	)	
	)	
Plaintiff	)	
v.	)	Civ. No. 95-0249-B
	)	
CHAMPION INTERNATIONAL CORPORATION,	)	
	)	
Defendant	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

BRODY, District Judge

Pursuant to Rule 52(a) of the Federal Rules of Civil Procedure,[1] the Court issues the following findings of fact and conclusions of law on the issue of Defendant's, Champion International Corporation (Champion), alleged liability to Plaintiff, Belinda J. Perkins, for sexual harassment and retaliation in violation of Title VII of the 1964 Civil Rights Act, 42 U.S.C. §§ 2000e to 2000e-17, and the Maine Human Rights Act (MHRA), 5 M.R.S.A. §§ 4551 - 4632. A trial was held before the Court from January 13, 1997, to January 15, 1997. For the reasons set forth below, the Court enters judgment for Champion on all counts.

I. TITLE VII AND THE MAINE HUMAN RIGHTS ACT

A. Statute of Limitations

Prior to filing a Title VII action in the federal district court, plaintiffs first must exhaust

[1] Rule 52(a) states, in pertinent part:

> In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58.

Fed. R. Civ. P. 52(a).

their administrative remedies. 42 U.S.C. § 2000e-5. In order for such claims to be actionable, administrative charges must be filed with the EEOC no later than 180 days after the alleged unlawful employment practice occurred. 42 U.S.C. § 2000e-5(e)(1). If the state in which the alleged discrimination occurred is a "deferral state," a plaintiff must file with the EEOC within 300 days after the discrimination, or within thirty days after the plaintiff has received notice that the state has terminated its proceedings. Id. A "deferral state" is "a state that has its own anti-discrimination laws and agency." EEOC v. Green, 76 F.3d 19, 20 (1st Cir. 1996). Maine is a "deferral state" because it has its own civil rights statute, the Maine Human Rights Act, and agency, the Maine Human Rights Commission (MHRC).

In deferral states, the EEOC generally must defer taking any action until sixty days have passed since a charge was filed with the state agency or until the state proceedings have terminated. 42 U.S.C. § 2000e-5(c). A charge filed with the EEOC usually is not considered "filed" for purposes of the 300-day time limit until sixty days have elapsed since the filing of charges with the state agency or the state agency has terminated its proceedings. See Mohasco Corp. v. Silver, 447 U.S. 807, 817 (1980). Nevertheless, Perkins and Champion have agreed that Perkins's charges were considered "filed" with the EEOC for purposes of the 300-day time limit the day she filed her charges with the MHRC. In reaching this agreement, Perkins and Champion relied on the terms of a worksharing agreement between the EEOC and the MHRC, according to which the MHRC purports to act as the EEOC's agent for the purpose of receiving charges. Both Perkins and Champion argue, consequently, that when Perkins filed her charges with the MHRC,

she also effectively filed them with the EEOC.[2]

Perkins filed her charges of sexual harassment and retaliation with the MHRC on January 28, 1994. In accordance with the agreement of the parties, the Court will assume that these charges also were considered "filed" with the EEOC on January 28, 1994. Therefore, Perkins's claims of sexual harassment and retaliation must be based on facts that she alleges took place within 300 days of January 28, 1994. In other words, the Court will consider only facts that Perkins alleges occurred on or after April 3, 1993.

B. Sexual Harassment

Title VII of the Civil Rights Act of 1964 makes it unlawful for an employer "to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin . . . ." 42 U.S.C. § 2000e-2(a)(1). Title 5, section 4572(1)(A) of the Maine Revised Statutes similarly prohibits discrimination based on sex. The Court's analysis of the federal and state statutes is identical. See Weeks v. State of Maine, 866 F.Supp. 601, 603 n.2 (D. Me 1994), (citing Bowen v. Department of Human Servs., 606 A.2d 1051, 1053 (Me. 1992) (deferring to federal analysis of Title VII when examining the Maine Human Rights Act)).

Perkins's sexual harassment claims are premised on the existence of a hostile work environment at Champion. Although Title VII and the Maine Human Rights Act do not explicitly proscribe sexual harassment in the form of a hostile work environment, courts have

[2] The Court notes that the First Circuit has called into doubt a seemingly similar worksharing agreement between the EEOC and the Massachusetts Commission Against Discrimination. See EEOC v. Green, 76 F.3d 19, 23 (1st Cir. 1996). Since both parties agree that the worksharing agreement does control, the Court will assume without deciding that Perkins's filing of charges with the MHRC constituted a filing of charges with the EEOC.

construed both statutes to prohibit it. See Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 73 (1986); Harris v. Forklift Sys., Inc., 114 S. Ct. 367, 370- 71 (1993); Bowen v. Department of Human Servs., 606 A.2d at 1053. A plaintiff who attempts to demonstrate the existence of a hostile work environment must prove the following elements: "(i) that he/she is a member of a protected class; (ii) that he/she was subject to unwelcome sexual harassment; (iii) that the harassment was based upon sex; (iv) that the harassment was sufficiently severe or pervasive so as to alter the conditions of plaintiff's [employment] and create an abusive [work] environment; and (v) that some basis for employer liability has been established." Brown v. Hot, Sexy, and Safer Prods., Inc., 68 F.3d 525, 540 (1st Cir. 1995) (citing Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 66-73 (1986)).

Among the factors considered in determining whether plaintiff has demonstrated the existence of a hostile or abusive work environment are the following: "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." Harris, 114 S. Ct. at 371; See also Brown, 68 F.3d at 540. Moreover, "[a] discriminatorily abusive work environment . . . can and often will detract from employees' job performance, discourage employees from remaining on the job, or keep them from advancing in their careers." Harris, 114 S. Ct. at 370-71. An employer will not be liable for the hostile environment sexual harassment by its employees, however, unless "'an official representing the institution knew, or in the exercise of reasonable care, should have known, of the harassment's occurrence, *unless* that official can show that he or she took appropriate steps to halt it.'" Duplessis v. Training & Dev. Corp., 835 F.Supp 671, 677 (D. Me. 1993) (quoting Lipsett v.

University of Puerto Rico, 864 F.2d 881, 901 (1st Cir. 1988)).

The Court now turns to an examination of the testimony to determine if Perkins has proved, by a preponderance of the evidence, that Champion is liable for the hostile environment sexual harassment of Perkins. Perkins testified that she observed obscene graffiti written about her on a catwalk, the back of a control booth, and on a piece of sheet metal during the Summer of 1993. The evidence demonstrates that Champion never knew, nor in the exercise of reasonable care should have known, about the graffiti in any of these instances. Perkins admitted that she erased the graffiti she discovered on the catwalk and on the sheet metal without reporting it to management. (Perkins Tr. at 179, ¶¶ 17-22, and at 180, ¶¶ 12-25). Although Perkins argued that management should have seen the graffiti on the sheet metal (Perkins Tr. at 180, ¶¶ 20-21), she did not know how long the graffiti existed before she erased it. (Perkins Tr. at 185, ¶¶ 4-6). The Court is not persuaded by a preponderance of the evidence that Champion should have known about graffiti that might have existed for only a matter of hours before being discovered by Perkins.

Champion likewise did not know about the existence of graffiti on the back of the control booth. Perkins testified that she showed the graffiti to Eric Kettel, the acting foreman and a union member. (Perkins Tr. at 179-80, ¶¶ 23-25, ¶¶ 1-4). She did not, however, tell Mr. Kettel to report the incident to management. (Perkins Tr. at 180, ¶¶ 7-9). As a union member, Mr. Kettel had no management responsibilities. He could not discipline other Champion employees. (Grant Tr. at 297-298, ¶ 25, ¶¶ 1-6). Perkins knew that union members at Champion were not considered management; in fact, she knew that a primary concern of the union was to protect union members from being disciplined by management. (Perkins Tr. at 164, ¶¶ 1-9).

Accordingly, since Perkins did not ask Mr. Kettel to talk to management about the graffiti (Perkins Tr. at 180, ¶¶ 7-9), she had no reason to expect that he would. Without any evidence showing that Mr. Kettel talked to management about the graffiti on the back of the control booth, the Court finds that management was not aware of its existence.

The management at Champion also did not know about the presence of sexually explicit graffiti Perkins testified she saw on a table top in the Summer of 1993. Perkins told only union president George Valliere about the graffiti on the table; she did not report it to management. (Perkins Tr. at 185-86, ¶¶ 16-25, ¶¶1-5). As stated above, Perkins knew that there was a "code of silence" between the union and management regarding the discipline of employees and that one union member generally would not "rat" on another union member. (Perkins Tr. at 175, ¶¶ 15-21, and 196, ¶¶ 4-9). The Court, moreover, is not satisfied that anyone from management observed the graffiti. Perkins's testimony that a man named Hugh from management saw the graffiti is unpersuasive. (Perkins Tr. at 186, ¶¶ 8-14). Similarly, the Court is not convinced that Mr. Richards from management observed the graffiti despite Perkins's testimony that he "*might*" have seen it before union members began to sand the table. (Perkins Tr. at 186, ¶¶ 17-25).

Perkins also testified that management knew about graffiti that appeared on an AGV cart in the Summer of 1993. Assuming the truth of Perkins's testimony that she pointed out the graffiti to Mike Haws, a superintendent at Champion, Perkins admitted that Mr. Haws's reaction was to have the graffiti removed immediately. (Perkins Tr. at 87, ¶¶ 15-22). She also admitted that she did not know when the graffiti first appeared on the cart. (Perkins Tr. at 87, ¶¶ 5-7). Although management might have known about the graffiti, it took immediate action to have the graffiti removed. Champion took appropriate remedial measures in this instance and is not liable

for a hostile environment based on this evidence.

Perkins also testified that her coworkers sexually harassed her by performing a prank that is commonly referred to as "greasing" equipment. She admitted, however, that men were also the victims of these pranks. (Perkins Tr. at 173, ¶¶ 4-10). There is nothing to suggest to the Court that these "greasing" incidents, admittedly acts of harassment, were based on Perkins's sex. They were not, therefore, acts that constitute sexual harassment. See Brown v. Hot, Sexy, and Safer Prods., Inc., 68 F.3d 525, 540 (1st Cir. 1995).

The management at Champion similarly did not know about the presence of sexually explicit graffiti about Perkins in the men's bathroom. Harland Grant, a machineman and union member at Champion, testified that male managers at Champion often used a different restroom. (Grant Tr. at 300, ¶¶ 13-16). Additionally, there was no testimony showing that Perkins even knew about the graffiti in the men's restroom during her employment. In order for Perkins to have a viable hostile environment claim, she must "subjectively perceive the environment to be abusive . . . ." Harris v. Forklift Sys., Inc., 114 S. Ct. 367, 370 (1993); see also Lattimore v. Polaroid Corp., 99 F.3d 456, 463 (1st Cir. 1996). Absent such knowledge, Perkins has failed to establish that "the harassment was sufficiently severe or pervasive so as to alter the conditions of [her employment] and create an abusive [work] environment . . . ." Brown, 68 F.3d at 540.

On August 9, 1993, Perkins complained to Steve Breda, a member of management, about graffiti she discovered on the back of an envelope. Perkins admitted that this marked the first time that she talked directly to any member of management about her feelings that she was being sexually harassed. (Perkins Tr. at 195, ¶¶ 18-25). Perkins further conceded that Mr. Breda told her that he would not allow this harassment to continue and that Champion would fire anyone

found to be responsible. (Perkins Tr. at 197, ¶¶ 1-8). The next day, August 10, 1993, Mr. Breda assured Perkins again that Champion would not tolerate sexual harassment in the workplace, (Perkins Tr. at 197, ¶¶ 9-20), and held a meeting with members of the crew with whom Perkins had been working. (Perkins Tr. at 197, ¶¶ 21-24). Mr. Breda discussed the company's sexual harassment policy with the crew and warned them that anyone engaging in sexual harassment would be fired. After this meeting, Perkins was assigned to a different crew. (Perkins Tr. at 198, ¶¶ 3-4). Perkins testified that she was not subjected to any further sexual harassment. (Perkins Tr. at 198, ¶¶ 5-12).

Mr. Breda later spoke individually with Mr. Grant, a union member, in order to find out who was responsible for the harassment. (Grant Tr. at 305, ¶¶ 4-7). George Valliere, union president, testified that he also tried to talk to shop stewards after a conversation with Mr. Breda to help determine who was responsible. No one was willing to come forward with information. (Valliere Tr. at 273, ¶¶ 4-16). Mr. Breda also checked with Perkins at a later date to see if she had been subjected to any more harassment; Perkins told him that she had not. (Perkins Tr. at 198, ¶¶ 16-21). Although Mr. Breda never discovered who was responsible for the harassment, the Court finds that he took appropriate steps to investigate Perkins's complaints of sexual harassment and to ensure that she would not be harassed in the future. See Lipsett v. University of Puerto Rico, 864 F.2d 881, 901 (1st Cir. 1988).

The evidence shows that after April 3, 1993, members of management at Champion either did not know that Perkins was being sexually harassed or took immediate measures to ensure that she would no longer be sexually harassed. The Court, therefore, finds that Champion is not liable for the hostile environment sexual harassment of Perkins.

C. Continuing Violation

To the extent that Perkins asks the Court to consider events she alleges took place before April 3, 1993, the Court must determine whether these alleged events constitute a continuing violation. There are only two types of continuing violations recognized in the First Circuit: serial violations and systemic violations. See Sabree v. United Bhd. of Carpenters and Joiners Local No. 33, 921 F.2d 396, 400 (1st Cir. 1990). Perkins has not alleged any evidence of a systemic violation. She does, however, allege facts that might constitute a serial violation. Such violations are "'composed of a number of discriminatory acts emanating from the same discriminatory animus, each act constituting a separate wrong actionable under Title VII.'" Id. (quoting Jensen v. Frank, 912 F.2d 517, 522 (1st Cir. 1990)). Serial violations are not actionable unless "at least one act in the series . . . fall[s] within the limitations period." Id. Moreover, there must be a "substantial relationship between the timely and the untimely claims" in order for there to be a continuing violation. Id. at 401. A substantial relationship does not exist if the otherwise time-barred events have a degree of permanence that should have put the plaintiff on inquiry notice to assert his or her rights. Id. (citing Jensen v. Frank, 912 F.2d 517, 522 (1st Cir. 1990)). "'A claim arising out of an injury which is "continuing" only because a putative plaintiff knowingly fails to seek relief is exactly the sort of claim that Congress intended to bar by the [300] day limitation period.'" Id. at 402 (quoting Roberts v. Gadsden Mem'l Hosp., 850 F.2d 1549, 1550 (11th Cir. 1988) (alteration in original)). Therefore, if Perkins knew she was being harassed at the time the alleged acts occurred, then these acts cannot constitute a serial violation and will not be considered by the factfinder. "This can be distinguished from a plaintiff who is unable to appreciate that he is being discriminated against until he has lived through a series of

acts and is thereby able to perceive the overall discriminatory pattern." Id.

The evidence does not support the existence of a serial violation. Perkins's allegations of harassment that occurred before April 3, 1993, include the following: 1) one or more of her coworkers overturned her supper; 2) several of her coworkers "greased" her equipment; 3) two of her coworkers gossiped about her rumored affair with another worker at the mill; 4) she was excluded from a meeting; and 5) Don Carey, a foreman, grabbed Perkins around the legs on three occasions and asked her if the tan she had "was an all-over tan." (Perkins Tr. at 70, ¶ 6). Although the first four events may constitute harassment, they were not based on Perkins's sex. See Brown v. Hot, Sexy, and Safer Prods., Inc., 68 F.3d 525, 540 (1st Cir. 1995). These events do not, therefore, constitute a serial violation. Perkins also may not rely on the fifth event described above because she knew at the time that she was being sexually harassed. (Perkins Tr. at 165, ¶¶ 1-8). Perkins was under an obligation to file a complaint with the EEOC within 300 days in order to preserve a Title VII claim based on this incident. See Sabree, 921 F.2d at 402. Since she failed to assert her rights in a timely manner, she cannot introduce this evidence now based on a serial violation theory.

D. Retaliation

Perkins alleges that Champion fired her because she complained about sexual harassment. Since Perkins cannot demonstrate any direct evidence of Champion's alleged discriminatory animus, however, she must show the following elements in order to satisfy a prima facie case of unlawful employer retaliation: "(1) [she] engaged in statutorily protected activity, and (2) [Champion] thereafter subjected [her] to an adverse employment action (3) as a reprisal for having engaged in the protected activity." Blackie v. State of Maine, 75 F.3d 716, 722 (1st Cir.

1996). Champion, on the other hand, has the responsibility to articulate a legitimate, nondiscriminatory reason for its challenged employment decision. See Fennell v. First Step Designs, Ltd., 83 F.3d 526, 535 (1st Cir. 1996). If Champion can articulate such a reason, Perkins must prove by a preponderance of the evidence that Champion's stated reason is false, and that discrimination was the real reason for the decision. See id. (citing St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 510-11 (1993)).

Champion first hired Perkins as a temporary employee on April 22, 1991. Temporary employees were given one year contracts and could be re-hired at the end of each year. Perkins admitted that she knew when she was hired that her employment was not for a definite period of time and that there was no guarantee that her employment would be renewed at the end of each year. (Perkins Tr. at 112, ¶¶ 5-12). Champion extended Perkins's employment for two one-year terms in September 1991 and October 1992. (Perkins Tr. at 42, ¶¶ 10-18). Each time Perkins re-signed with Champion she acknowledged that she understood that her employment was on a temporary basis. (Perkins Tr. at 112, ¶¶ 5-12). On September 30, 1993, the date on which Perkins's third one-year contract expired, Champion decided not to renew Perkins's employment.

Perkins argued that Champion did not renew her employment solely because she complained about sexual harassment. She notes that Champion's decision was made approximately one month after she first talked to Steve Breda about being sexually harassed on August 10, 1993. The proximity in time between Perkins's complaints and Champion's decision not to rehire Perkins can raise questions about the motive and intent of Champion's management. See Nelson v. University of Maine Sys., 923 F.Supp 275, 285 (D.Me. 1996). The closer an

adverse action occurs to a protected activity, the greater the inference that the employer was retaliating, therefore satisfying the causation requirement. Id. The Court finds, however, that Champion's decision not to re-hire Perkins was based on the fact that Champion did not believe Perkins was performing her job in a satisfactory manner.

The record is replete with instances where Perkins committed safety violations and generally was considered by management to be a poor worker. It is true that Champion's decision not to re-sign Perkins comes in close temporal proximity to Perkins's complaints of sexual harassment. The mere coincidence in timing, however, between the date of Perkins's complaint and the date her contract expired does not by itself establish retaliation. Perkins argued that if Champion truly were concerned about Perkins's work performance, members of management could have decided not to re-sign her one of the previous two years. Perkins further argued that the fact that Champion did re-sign her the previous two years proves that they were not concerned with her work performance. The Court disagrees. It is entirely reasonable that members of the management would decide to give Perkins a chance the previous two years to improve her performance but decide in 1993 that they had finally had enough of her incompetance. Perkins has not proved, by a preponderance of the evidence, that Champion's stated reason was false, and that the true reason Perkins was not re-signed was because Perkins complained about sexual harassment. The Court, therefore, finds that Champion did not unlawfully retaliate against Perkins.

II. CONCLUSION

Champion is not liable for the hostile environment sexual harassment of Perkins. The evidence demonstrates that the members of management at Champion either did not know

Perkins was being sexually harassed or took immediate measures to put an end to the harassment and discover what parties were responsible. Perkins also has not proven the existence of a continuing violation: First, all but one of the time-barred acts that Perkins seeks to include as part of a serial violation were not acts of harassment based on Perkins's sex. Second, Perkins knew at the time of the last alleged time-barred act that she was being sexually harassed and therefore was required to assert her rights within 300 days of the event. Perkins did not assert her rights based on this event. The Court will not consider it as part of her sexual harassment claim. Finally, Perkins cannot prove by a preponderance of the evidence that Champion's stated reason for its decision not to re-sign Perkins was false and that the true reason was because she complained about sexual harassment. The record supports Champion's stated reason that Perkins was not re-signed because of her many safety violations and general poor work performance.

The Court finds in favor of Champion on all counts.

SO ORDERED.

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MORTON A. BRODY
United States District Judge

Dated this 24th day of February, 1997.